

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FRANK GIOVINCO,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

22-cv-9892

ORDER

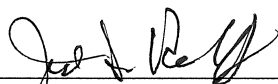
On October 24, 2023, Magistrate Judge Robert W. Lehrburger issued a Report and Recommendation in the above-captioned matter recommending denial of the petition filed by Frank Giovinco, pro se, pursuant to 28 U.S.C. § 2255.

Petitioner has failed to file any objection to the Report and Recommendation after receiving notice that he was required to file any objections and that a failure to do so would result in a waiver of his right to further review. For that reason alone, petitioner has waived any right to review by this Court. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989). Nevertheless, the Court has reviewed the Report and Recommendation de novo and finds itself in complete agreement with its analysis.

Accordingly, the Court hereby adopts the Report and Recommendation, and, for the reasons therein, dismisses the petition with prejudice. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253.

Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); Neitzke v. Williams, 490 U.S. 319, 325 (1989). The Clerk is directed to enter judgment.

SO ORDERED.

  
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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
September 19, 2023